

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RICHARD E. SHOEMAKER)

For Appellant: Richard E. Shoemaker, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jon Jensen
Counsel

OP IN1 ON

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Richard E. Shoemaker against a proposed assessment of additional personal income tax in the amount of \$262.00 for the year 1974.

Appeal of Richard E. Shoemaker

The question to be decided is whether appellant qualified for head of household filing status for the taxable year 1974.

Appellant and his wife separated in April 1974, and appellant thereafter maintained a household that included his three children. In March 1975 his marriage was dissolved by a final decree of dissolution. When appellant filed his personal income tax return for 1974, he computed his tax liability using the favorable tax rates allowable to a head of a household. Respondent determined, however, that appellant was not qualified for head of household status because he was still married at the close of the 1974 taxable year.

Under Revenue and Taxation Code section 17042, an individual may qualify as a head of household "if, and only if, such individual is not married at the close of his taxable year." For purposes of section 17042, an individual is not considered to be married if he is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance (Rev. & Tax. Code, § 17043, subd. (b)), or if, during the entire taxable year, such individual's spouse is not a member of his household. (Rev. & Tax. Code, § 17042, subd. (b); Rev. & Tax. Code, § 17173, subd. (c)(3).) In this case, it is clear that appellant fails to meet the statutory qualifications for head of household filing status. He did not obtain his divorce decree until March of 1975, and his ex-wife was a member of his household for at least the first three months of 1974. On the basis of these facts, respondent correctly concluded that appellant was still married, within the meaning of the head of household provisions, at the end of 1974. Respondent's assessment of additional tax must therefore be upheld.

Appeal of Richard E. Shoemaker

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Richard E. Shoemaker against a proposed assessment of additional personal income tax in the amount of \$262.00 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of September, 1978, by the State Board of Equalization.

Geoffrey, Chairman

David Klein, Member

Eric S. Smith, Member

William B. Bennett, Member

_____, Member